IN THE

Supreme Court of the United States

OCTOBER TERM, 197

No. 71-853

Supreme Court, U.S.
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STANLEY M. GREENBERG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

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Petitioner does not argue, in support of his application for review by this Court, as the Government would have it, that " * * * in light of his political standing and influential friends, he would not have engaged in any such activity, and thus he could not have been guilty. * * * " (Br. in Opp. 5). To the contrary, petitioner has shown that a fair analysis of the evidence as to his relationship with Alper, a reputable client, proves his innocence of complicity in the conspiracy and check kiting scheme between Alper and Hartsock (Pet. 11-22). Petitioner was caught up in a long trial in which masses of testimony and exhibits established, beyond question, the guilt of Alper and Hartsock, and petitioner was unable, in the words of Mr. Justice Jackson, " * * * to make his own case stand on its own merits * * * " *Krulewitch v. United States*, 336 U.S. 440, 454 (1949). The issue is not one of sufficiency of evidence to

support a jury verdict. There is no evidence as to petitioner's lawyer-client relationship with Alper which is not fully consistent with petitioner's innocence. The case against petitioner should not have gone to the jury.

The technique by which innocent acts of petitioner's part were braided into, and made to appear a part of, the wrongful conduct of Alper and Hartsock is carried on in the brief in opposition filed in this case. Thus, the statement of facts in the brief in opposition begins by describing the check kiting arrangement as having "utilized at one time or another the private checking accounts of Alper and petitioner and the corporate checking accounts of five companies which Alper controlled." (Br. in Opp. 3.) To this statement is joined a footnote which states that between October 1, 1964 and June 30, 1965, ninety-five percent of receipts and disbursements of two of the companies "consisted of checks exchanged among the five companies and receipts from or disbursements to Alper and petitioner." (Br. in Opp. 3, fn. 3.)

Take the footnote statement first. The period between October 1, 1964 and June 30, 1965, was the period of the enormous check kiting scheme in which Alper and Hartsock engaged. During that period, the only checks received by petitioner were the $100 checks owing to him as counsel for the companies, the same checks which he had been receiving since the companies were formed. In no sense was he in receipt of disbursements as a result of participation in the check kiting scheme, and the inference to that effect in the footnote statement is completely without support.[1]

[1] The portion of the transcript (Tr. 2938-54) relied upon by the Government in support of its assertion that ninety-five percent of the receipts and disbursements of Magnum and Life Aid consisted of checks exchanged among Alper's companies and receipts from or disbursements to Alper and petitioner does not support the prosecution's statement. The cash receipts of Magnum Chemical Corporation from October 1, 1964 to June 30, 1965 totaled $4,139,078.96. (Tr. 2939.) None of these receipts came from Greenberg. (Tr. 2941.) The total disbursements for Magnum during

The statement in the text is also misleading. The transaction between Alper and petitioner which involved the use of petitioner's checking account took place in the fall of 1963, long before Alper and Hartsock began their check kiting activities. The facts are fully set forth in the petition (Pet. 13-15). By the use of the phrase "at one time or another" the brief in opposition creates the impression that the petitioner's private checking account was used in connection with the 1964-1965 check kiting scheme.

Again, the brief in opposition states: "Alper's operations were facilitated by petitioner in a number of ways." (Br. in Opp. 4). The primary illustration given to support this charge is the reference to the check exchange between petitioner and Alper in 1963, the exchange which is fully covered in the petition (Pet. 13-15) and which was conceded by the prosecution's expert witness to be consistent with a loan agreement. Moreover, "Alper's operations" carries the thought that Alper's check kiting scheme was in operation at the time of this transaction. The contrary is the fact. Alper at that time and for a considerable time thereafter—actually, until the check kiting scheme was exposed—was viewed as a successful and respectable businessman.

There is no need to discuss the remainder of the Government's statement of facts. The points with respect to the bank loans, the financial statements submitted by peti-

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the same period were $4,448,783.64. (Tr. 2942) None of these disbursements, other than his weekly $100 retainer checks, went to Greenberg. (Tr. 2945) Life-Aid's total receipts were $4,535,425.37. (Tr. 2947) None of these receipts came from Greenberg. (Tr. 2948) Disbursements totaled $4,632,114.61. (Tr. 2949) Other than his weekly retainer, none of this amount was disbursed to Greenberg. (Tr. 2952-53) The $2,000 payment on a loan to Greenberg (Tr. 2952) was not a disbursement to Greenberg, but rather to [illegible]. The prosecution's proffered exhibit, which listed this $2,000 as a disbursement to Greenberg was objected to as misleading for this reason (Tr. 2901-06), and the trial court agreed and sustained the objection. (Tr. 2917).

tioner in obtaining these loans, and petitioner's conversations with bank officials, are all covered in detail in the petition. The main point is that petitioner was only tied into this conspiracy by a blurring of time and purpose, by crediting him with participation in and knowledge of acts and statements by others which he never authorized, intended or even knew about.

Respectfully submitted.

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